CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 172

MINNIE REESE RICHARDSON WRAGG,
PETITIONER,

vs.

FEDERAL LAND BANK OF NEW ORLEANS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 23, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

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IN THE
UNITED STATES CIRCUIT COURT OF APLEALS FOR THE FIFTH CIRCUIT.

No. 9753.

CAPTION.

BE IT REMEMBERED that at a regular term of the United States District Court, in and for the Northern Division of the Middle District of Alabama, the Honorable T. A. Murphree, United States District Judge, duly designated and appointed to hold Court for the Middle District of Alabama, presiding, and holding its session at Montgomery, Alabama, which said term began on the 5th day of December, 1939, and continued from term to term, thereafter, up to and including the 6th day of August, 1940, there came on to be heard and determined, among other causes pending on the docket, while Court was regularly in session, the following cause:

IN RE:
MINNIE REESE RICHARDSON WRAGG, FARM DEBTOR.

In Proceedings under Section 75, of the Bankruptcy Act.
Appellant.

FEDERAL LAND BANK OF NEW ORLEANS,
Objecting Creditor.

No. 8553.

Appearances:
Walter J. Knabe, Montgomery, Alabama,
Jack Crenshaw, Montgomery, Alabama,
Attorneys for Appellant.
Steiner, Crum & Weil, Montgomery, Alabama,
Attorneys for Objecting Creditor.

2 In the Matter of
Minnie Reese Richardson Wragg,
Farm Bankrupt.

To the Clerk of the District Court for the Northern Division of the Middle District of Alabama:

You will please prepare a transcript on appeal herein, including the following:

1. Original Farm Debtor's petition filed October 16, 1937.

2. Schedules A-2, A-3, and B-1, attached to original petition, omitting all formal portions thereof.

3. Order of the District Court approving filing of the original petition dated October 16, 1937.

4. Order appointing Douglas Booth Conciliation Commissioner and referring case to Conciliation Commissioner.

5. Petition of Farm Debtor for order restraining foreclosure of mortgage, filed October 16, 1937.

6. Offer of extension dated November 12, 1937.

7. Application for confirmation of offer of extension filed December 3, 1937.

8. Report of the Conciliation Commissioner dated December 16, 1937.

9. Order setting report Conciliation Commissioner for hearing filed December 22, 1937.

10. Objection of Federal Land Bank to confirmation of Farm Debtor's extension proposal filed January 4, 1938.

11. Decree of District Court dismissing petition dated January 4, 1938, filed January 4, 1938.

12. Application to be permitted to appeal dated January 18, filed January 19, 1938.

13. Assignment of errors filed January 19, 1938.

14. Certificate of District Court that appeal not taken in good faith filed February 1, 1938.

15. Petition to reopen and reinstate cause, filed March 11, 1940.

3 16. Answer of Federal Land Bank of New Orleans to petition to reinstate, omitting Exhibits A, B, and C, but including Exhibit D, filed June 29, 1940.

17. Agreement of submission filed July 6, 1940.

18. Opinion and decree of District Court denying petition to reopen and dismissing proceedings, dated August 6, 1940, filed August 8, 1940.

19. Statement of appeal filed September 5, 1940.

20. Bond on appeal.

21. Notice of appeal and acceptance of service thereof.

WALTER J. KNABE,
JACK CRENSHAW,
Attorneys for Appellant.

Due service and receipt of a copy of the within citation is hereby admitted.

Done this 1 day of Nov., 1940.

B. P. CRUM,
Attorney for Objecting Creditor, Federal Land Bank.

Filed Nov. 2, 1940.

4 FARM DEBTOR'S PETITION.

In Proceedings of Section 75 Under Bankruptcy Act.
No. 8553.

To the Honorable C. B. Kennarmer, Judge of the United States District Court for the Northern Division of the Middle District of Alabama:

The petition of Minnie Reese Richardson Wragg, whose address is Elmore, R. F. D., of the County of Elmore, in said District and State of Alabama, who is hereafter called "Petitioner," respectfully represents that said petitioner is a farmer as defined by law at this time, and is entitled to file this petition under the provisions of Section 75 of the Bankruptcy Act as last amended; that petitioner's farming operations occur, or are conducted in the County or Counties of Elmore within said judicial District; that petitioner is insolvent (or unable to meet petitioner's debts as they mature); and that petitioner desires to affect a composition or extension of time to pay petitioner's debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed marked A (1, 2, 3, 4, 5) and verified by your petitioner's oath, contains a full and true statement of all petitioner's debts, and (so far as it is possible to ascertain) the names and places of residence of petitioner's creditors and such further statements concerning said debts as are required by the provisions of said Acts.

That the schedule hereto annexed marked B (1, 2, 3, 4, 5, 6) and verified by your petitioner's oath, contains an accurate inventory of all of her property both real and personal, and such further statements concerning said property as are required by the provisions of said Acts.

Wherefore your petitioner prays, that this petition may be approved by the Court and proceedings had in accordance with the provisions of said section.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

C. E. ALEXANDER,
Attorney for Petitioner,
Prattville, Alabama.

5 United States of America,
Northern Division of the
Middle District of Alabama.

I, Minnie Reese Richardson Wragg, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

Subscribed and sworn to before me, this 13th day of October, A. D. 1937.

HEIRSTON L. FOSTER,
(Seal) Notary Public.

Filed October 16, 1937.

6

SCHEDULE A-2.

Creditors Holding Securities.

Description of Securities.—When and where debts were contracted.	Value of Securities $ Cts.	Amount of Debts $ Cts.
Federal Land Bank of New Orleans. New Orleans, La.	6,900.00	4,224.94
The west half of the Northeast quarter and the Northeast quarter of the Southwest quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, containing in the aggregate 140 acre, more or less. Subject, however, to that certain right-of-way in favor of the Southern Natural Gas Corporation, or its assigns dated November 29, 1933, executed by the Federal Land Bank of New Orleans.		
Oct. 15, 1934. New Orleans, La.		
Total	6,900.00	4,224.94

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

7 SCHEDULE A-3.

Creditors Whose Claims Are Unsecured.

Names of Creditors.—Residences.—When and where contracted.	Amount $ Cts.
C. S. Richardson, 2201 M St. NW, Washington, D. C. Over a period of four years in Montgomery, Ala. and Washington, D. C. Money loaned no note of security.	4,928.00
M. R. Richardson, Montgomery, Ala. Over a period of four years in Montgomery, Ala. Money loaned no note of security.	1,489.00
J. E. Richardson, Montgomery, Ala. In Montgomery, Ala. Over a period of four years. Money loaned no note of security.	6.00
O. A. Richardson, Montgomery, Ala. In Montgomery, Ala. Over a period of four years. Money loaned no note of security.	32.00
Total	6,455.00

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

SCHEDULE B—STATEMENT OF ALL PROPERTY OF BANKRUPT.

8 Schedule B-1.

Real Estate.

	Estimated Value $ Cts.
The following land located in Elmore County, Alabama:	6,900.00
The West half of the Northeast quarter and the Northeast quarter of the Southwest	

quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, containing in the aggregate 140 acres, more or less. Subject, however, to that certain right-of-way in favor of the Southern Natural Gas Corporation, or its assigns, dated November 29, 1933, executed by the Federal Land Bank of New Orleans.

Mortgage to Federal Land Bank of New Orleans, La.

Mortgage executed on the 15th day of Oct. 1934 for the amount of $3,857.00. Mortgage has been decreed to be foreclosed. Amount now due as ascertained by the Court $4,647.43.

Total 6,900.00

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

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9 (Title Omitted.)

To the Honorable C. B. Kennamer, Judge of said Court:

Your petitioner, the above named debtor, would show unto your Honor that she has filed in this Honorable Court a petition under one of the debtor's provisions or one of the Sections of Chapter A of the act establishing a uniform system of bankruptcy in the United States as amended, and that said matter is pending in your Honor's Court, and your Honor's petitioner would further show that the Federal Land Bank of New Orleans, Louisiana, is about to foreclose a certain mortgage on property of your petitioner and her estate and sell the same for the purpose of foreclosing said mortgage and for the payment of its mortgaged debts

and through the agency of or with the aid of Steiner, Crum and Weil, a firm of attorneys at law, whose address is Montgomery, Alabama, as its agent or agents or attorney or attorneys and is about to sell for purpose stated the following described property of petitioner and her estate, to-wit:

The West half of the Northeast quarter and the Northeast quarter of the Southwest quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, containing in the aggregate 140 acres, more or less. Subject, however, to that certain right-of-way in favor of the Southern Natural Gas Corporation, or its assigns, dated November 29, 1933, executed by the Federal Land Bank of New Orleans. Above property located in Elmore County, Alabama.

Your petitioner avers that said sale should be stayed and restrained. Your petitioner would further show that in proceedings of Section 75 of Bankruptcy Act, as amended, the provisions of Sub-Section N, and Sub-Section O, of said Section 75, give to this Honorable Court exclusive jurisdiction of petitioner and all her property; and the provisions of Sub-Section 11, are effective as to this debtor; and under the law this Honorable Court is authorized to protect its jurisdiction of the property of the estate of the debtor and determine its lawful disposition.

Wherefore petitioner prays that this Honorable Court do stay and restrain the said Federal Land Bank of New Orleans, from further foreclosure proceedings, or to sell this said property of the petitioner for the purpose the foreclosing the said mortgage referred to above and of the mortgage debt secured thereby; and petitioner prays for

such further, special or general relief as she may be entitled to have upon a consideration of this petition.

And on oath she states that the averments of the petition are true.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.
C. E. ALEXANDER,
Attorney for Pettioner.

United States of America,
Northern Division of the
Middle District of Alabama.

I, Minnie Reese Richardson Wragg, the petitioner debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

MINNIE REESE RICHARDSON WRAGG,
Petitioner.

Subscribed and sworn to before me, this 13 day of October, A. D. 1937.

HEIRSTON L. FOSTER,
(Seal) Notary Public.

Filed Oct. 16, 1937.

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11 (Title Omitted.)

At Montgomery, Alabama, in said district, on the 16th day of October, 1937, the petition of Mrs. Minnie Reese Richardson Wragg, praying that she be afforded an oppor-

tunity to effect a composition or an extension of time to pay her debts under Section Seventy-five of the Bankruptcy Act, having been heard and duly considered by the undersigned Judge of this Court,

It is now ordered that the same is approved as properly filed under said Section.

This 16th day of October, 1937.

C. B. KENNAMER,
United States District Judge.

Filed Oct. 16, 1937.

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12 In the United States District Court for the Middle District of Alabama, Northern Division.

In the Matter of:
Minnie Reese Richardson Wragg, Farm Debtor.
No. 8553

The petition of Mrs. Minnie Richardson Wragg, whose post office address is R. F. D. Elmore, Ala., of the county of Elmore, State of Alabama, filed in this Court on the 16th day of October, her petition, praying that she be afforded an opportunity to effect a composition or extension of time to pay her debts under Section Seventy-five of the Bankruptcy Act, as amended, in farm debtor bankruptcy proceedings, and said petition having been duly approved by order of this Court on the 16th day of October, 1937,

It is therefore ordered that the said matter be referred to Mr. Douglas Booth, a duly qualified conciliation commissioner of this Court for the County of Autauga, an adjoining County to Elmore County, the conciliation commissioner

of Elmore County having rescued himself from serving in this case, and the farm debtor and her attorney having consented to the reference of this case to the conciliation commissioner of Autauga County.

It is further ordered that the said Douglas Booth, conciliation commissioner of Autauga County take such further proceedings therein as are required by said Section of the Bankruptcy Act, as amended; and that the said Mrs. Minnie Reese Richardson Wragg attend before said conciliation commissioner at such times and places as she may be required and shall submit to such orders as may be made by said conciliation commissioner or by this Court relating to said proceedings under said Section of the Bankruptcy Act.

This 25th day of October, 1937.

C. B. KENNAMER,
United States Judge.

Filed Oct. 25, 1937.

OFFER OF PROPOSED TERMS OF COMPOSITION OR EXTENSION.

13 (Title Omitted.)

Comes the above named farm debtor and offers the following terms of composition and extension:

(1.) To pay the Federal Land Bank of New Orleans, La., the sum of One Hundred Twenty-five Dollars per year, as rent, on the 15th day of October of each year for a period of three years, on the land on which they now hold a mortgage, at the end of said period of three years to pay the said Federal Land Bank of New Orleans the balance

due on their said mortgage. The said Federal Land Bank of New Orleans is not to molest or in any way interfere with the possession of said farm debtor or to proceed with the foreclosure of their said mortgage.

(2.) To execute a written promise to pay all other named creditors after a period of three years.

Given under my hand this 12th day of November, 1937.

MINNIE REESE RICHARDSON WRAGG.

Filed this the 12th day of November, 1937.

DOUGLAS BOOTH,
Conciliation Commissioner,
Autauga County, Alabama,
at Prattville, Alabama.

APPLICATION FOR CONFIRMATION OF A COMPOSITION OR EXTENSION.

14 (Title Omitted.)

To the Honorable C. B. Kennamer, Judge of the District Court of the United States for the Northern Division of the Middle District of Alabama:

Now comes Minnie Reese Richardson Wragg, the above named debtor, and respectfully represents to the Court that, after she has filed in Court a schedule of her property and a list of her creditors, as required by law, she offered a proposal for a composition, or an extension to her creditors, which proposal has been accepted in writing by a majority in number of all such creditors, including secured creditors whose claims have been or are to affected by the pro-

posal, (the one secured creditor having not made acceptance) the number accepting my said proposal represent a majority in number and amount of all claims.

Wherefore the said Minnie Reese Richardson Wragg respectfully asks that the said proposal be confirmed by the Court.

Given under my hand this 3rd day of December, 1937.

MINNIE REESE R. WRAGG,
Debtor.

Filed this the 3rd day of December, 1937.

DOUGLAS BOOTH,
Conciliation Commissioner,
Autauga County, Alabama,
at Prattville, Alabama.

REPORT OF DOUGLAS BOOTH, CONCILIATION COMMISSIONER, AUTAUGA COUNTY, ALABAMA.

15 (Title Omitted.)

To the Honorable C. B. Kennamer, Judge of said Court:

The undersigned Conciliation Commissioner of Autauga County, Alabama, most respectfully reports to your Honor as follows:

That pursuant to the provisions of Sub-section (e) of Section 75 of the Bankruptcy Act as last amended, he gave notice as required thereby to the secured and unsecured creditors of the debtor, calling the first meeting to be held on the 12th day of November, 1937, at 10:00 o'clock A. M., at the office of the undersigned Conciliation Commissioner,

in Prattville, Alabama; that at said meeting an examination of the debtor was had and a transcript of her testimony taken on such examination is submitted herewith. That the farm debtor then filed an "offer of proposed terms of composition or extension," which is submitted herewith. That thereupon the meeting was continued until December 3rd, 1937, at 10:00 o'clock A. M., before the undersigned as Conciliation Commissioner, at his office in Prattville, Alabama, and at said meeting proof of claims were filed by all the unsecured creditors listed in the schedules attached to the farm debtor's original petition, and no objection being made thereto, were allowed. The The Federal Land Bank of New Orleans, the only secured creditor listed in the schedules attached to the debtor's original petition, appeared specially through its attorneys and filed a motion to dismiss the original petition, on the ground that the debtor was not at the time of the filing of her original petition a farmer, within the meaning of Section 75 of the Bankruptcy Act as last amended, and thereafter, without waiving its said motion, filed
16 its proof of its secured claim, and no objection being made thereto the claim was allowed.

Thereupon an additional examination of the farm debtor was had, and the attorneys for The Federal Land Bank of New Orleans examined as witnesses as to the value of the lands Mac Sanders and John Barber, who testified as to the value of the lands conveyed by the mortgage held by The Federal Land Bank of New Orleans and given by the debtor to secure its said claim. A transcript of the additional testimony of the farm debtor and a transcript of the testimony of said named witnesses is submitted herewith.

Acceptances each of the unsecured creditors of the "offer f proposed terms of composition or extension" made by the debtor were filed, and the secured creditor, The Federal Land Bank of New Orleans, filed its rejection of the

debtor's said "offer of proposed terms of composition or extension."

The debtor filed her application for confirmation of her "offer of proposed terms of composition or extension." Said application, together with the acceptance of the unsecured creditors and the rejection of the secured creditor, and the proofs of the allowed secured and unsecured claims, are transmitted herewith.

Upon consideration, it is my opinion from the testimony that the proposal of the said farm debtor does not include an equitable and feasible method of liquidating the claim of the secured creditor and of her financial rehabilitation. The evidence further shows that the reasonable value of the land does not exceed the indebtedness secured by the mortgage on the land, and the offer to pay One Hundred and Twenty-five Dollars ($125.00) per year rent for the land, which the testimony shows is less than its yearly rental value, will not give a fair return on the mortgage indebtedness during the proposed extended period.

Without going into further detail as to the testimony or giving further reasons, it is my recommendation that the offer be not approved.

Respectfully submitted,
DOUGLAS BOOTH,
Conciliation Commissioner,
Autauga County, Alabama,
at Prattville, Alabama.

17 Filed Dec. 16, 1937.

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18 (Title Omitted.)

On December 16th, 1937, the Conciliation Commissioner to whom this proceedings had theretofore been referred

by order of the Court, submitted to the Court, and filed in the office of the Clerk of the Court, a recommendation that the proposal made by the farm debtor to her creditors be not approved by the Court,

It is now ordered that the report of the Conciliation Commissioner, and such recommendation, be set down for hearing and appropriate action of the Court thereon, in the Chambers of the United States District Judge, at Montgomery, Alabama, at 10:00 o'clock A. M., Tuesday, the 4th day of January, 1938.

It is further ordered that the Clerk of this Court send by mail a copy of this order to the farm debtor, her attorney of record, and to each of the creditors of the farm debtor, or their attorney of record.

This 22nd day of December, 1937.

C. B. KENNAMER,
United States District Judge.

Filed Dec. 22, 1937.

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19 (Title Omitted.)

Comes The Federal Land Bank of New Orleans, a corporation incorporated under an Act of Congress of the United States, having its principal place of business in the City of New Orleans, State of Louisiana, a secured creditor of the farm debtor in this proceeding, and objects to the confirmation of the extension proposal made by the debtor to her creditors, and for grounds of such objections assigns the following:

(1) Said proposal is not a fair, equitable, and feasible method for the liquidation of this creditor's secured debt

against the debtor, nor is it an equitable and feasible method of financial rehabilitation for the debtor.

(2) Said proposal is not for the best interest of all of the creditors of the debtor.

(3) Said proposal was not made in good faith.

STEINER, CRUM & WEIL,
Attorneys for The Federal
Land Bank of New Orleans.

Filed Jan. 4, 1938.

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20 (Title Omitted.)

This matter coming on this day to be heard upon the report of the Conciliation Commissioner and his recommendation that the proposal made by the farm debtor to her creditors be not approved by the Court, and also upon the motion of The Federal Land Bank of New Orleans, a secured creditor of the debtor, that the original petition of the debtor be dismissed on the ground that the debtor was not a farmer when her petition was filed, within the meaning of the law, and on the objections filed by said The Federal Land Bank of New Orleans to the confirmation of the extension proposal made by the debtor to her creditors;

Came the farm debtor by her attorney, and The Federal Land Bank of New Orleans by its attorney, and argued and submitted the matter to the Court for its decision and judgment:

Upon consideration, the Court is of the opinion that the recommendation of the Conciliation Commissioner that the proposal made by the farm debtor to her creditors be not

approved, should be approved and adopted by the Court, and in view of that conclusion it is unnecessary to pass on the question of whether the debtor is a farmer or not, within the meaning of the law.

It is accordingly Ordered, Adjudged, and Decreed by the Court and the Judge thereof that the recommendation of the Conciliation Commissioner that the proposal made by the farm debtor to her creditors be and the same is hereby approved, and the proposal is not approved.

It is further Ordered, Adjudged, and Decreed by the Court and the Judge thereof that the objections made by The Federal Land Bank of New Orleans to the confirmation of the extension proposal made by the debtor to her creditors be and the same are hereby sustained, and that
21 the extension proposal made by the debtor to her creditors be and the same is hereby disapproved.

The debtor through her attorney having requested that she be granted fifteen days from the date of this order within which time to amend her original petition and pray to be adjudged a bankrupt, and the Court being of the opinion after hearing argument of counsel for the respective parties that the debtor is not entitled to so amend her petition in order to obtain the benefits of Sub-section (s) of Section 75 of the Bankruptcy Law, but she is entitled to become a voluntary bankrupt under the general Bankruptcy Law as last amended if she so desires:

It is Ordered and Adjudged that the debtor has fifteen days from the date of this decree within which to take such steps toward becoming a voluntary bankrupt under the general Acts of Bankruptcy as last amended as she may be advised to adopt. If such action is not taken by the debtor within the time stated it is further Ordered and Adjudged that her original petition and all proceedings

thereunder be and the same stand dismissed out of this Court.

Done at Montgomery, this January 4, 1938.

C. B. KENNAMER,
District Judge.

Filed Jan. 4, 1938.

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22 (Title Omitted.)

The above named Minnie Reese Richardson Wragg, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 4th day of January, 1938, does hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons set forth in the assignment of errors filed herewith, and she prays that her appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit under the rules of such cases made and provided.

And your petitioner further prays that she be allowed to perfect said appeal without being required to enter into securities for the cost or to make bond, she having filed herewith an affidavit of poverty.

Respectfully submitted this the 18 day of January, 1938.

C. E. ALEXANDER,
Attorney for Minnie Reese
Richardson Wragg.

Filed January 19, 1938. 5:30 P. M.

23 State of Alabama,
Montgomery County.

Before me, the undersigned authority in said state and county personally appeared Minnie Reese Richardson Wragg who being by me first duly sworn, deposes and says on oath as follows: I have heretofore filed a petition in the United States District Court for the Middle District of Alabama, Northern Division, under Section 75 of the Bankruptcy Law seeking a composition or extension of my debts and on January 4, 1938, Honorable C. B. Kennamer, Judge of said Federal Court decreed adversely to my interest and I desire to perfect an appeal but I am without funds or any means to give security or bond for the perfection of said appeal; that I have no means whatsoever to obtain any money and that I cannot obtain any person to become surety for me and that I believe that I am entitled to the redress that I seek on said appeal and that I am a citizen of the United States.

MINNIE REESE RICHARDSON WRAGG.

Sworn to and subscribed before me this 19 day of January, 1938.

FLORA E. ELDER,
(Seal) Notary Public.

Filed Jan. 19, 1938. 5:30 P. M.

---

24 (Title Omitted.)

Now comes Minnie Reese Richardson Wragg, farm debtor in the above entitled cause and files the following assignment of errors upon which she is relying upon her prosecution of her appeal in the above entitled cause from the

decree made by this Honorable Court on the 4th day of January, 1938.

1.

That the United States District Court for the Northern Division of the Middle District of Alabama erred in approving the recommendation made by the Conciliation Commissioner.

2.

That said Court erred in its order and judgment and decree sustaining the objections made by the Federal Land Bank of New Orleans to the confirmation of the extension proposal made by the debtor to her creditors.

3.

That said Court erred in its decree denying the right of the debtor to amend her petition in order to obtain the benefits of Sub-section S of Section 75 of the Bankruptcy Law.

C. E. ALEXANDER,
Attorney for Appellant.

Filed Jan. 19, 1938. 5:30 P. M.

State of Alabama,
Autauga County.

Before me, the undersigned authority in said State and County, personally appeared C. E. Alexander, who being by me first duly sworn deposes and says on oath as follows: I am the attorney for Minnie Reese Richardson Wragg in the matter of her proceeding under Section 75 of the Bankruptcy Act. I have acted as her sole attorney in this matter which is filed in the District Court of the United States

for the Northern Division of the Middle District of Alabama. For my services in this matter I have not been paid anything and have no agreement as to any pay or fee. I have been given no security for any fee. I have been given no promise of pay in this matter.

C. E. ALEXANDER.

Sworn to and subscribed before me this 19th day of Jan. 1938.

MITTIE RAY,
(Seal) Notary Public.

Filed Jan. 19, 1938. 5:30 P. M.

---

26 (Title Omitted.)

This matter came on for hearing on the application of Minnie Reese Richardson Wragg, farm debtor, to be permitted to appeal *in forma pauperis*, and upon consideration it is Ordered and Adjudged that said application be and it is hereby denied.

And this Court further certifies, pursuant to Section 832, Title 28, of the United States Code, that in its opinion said appeal is not taken in good faith.

Dated this February 1st, 1938.

C. B. KENNAMER,
U. S. District Judge.

Filed Feb. 1, 1938.

27 (Title Omitted.)

To the Honorable Charles B. Kennamer, Judge of said Court:

Your petitioner, the above styled party, would show unto your Honor that heretofore she did file in this Court what is commonly called a farm debtor proceeding whereby she sought relief under the provisions of Section 75 of the Bankruptcy Act and that her said case in said Court has been terminated or closed; that under the provisions of sub-divisions of paragraph 8 of Section 2 of the Act establishing a Uniform System of Bankruptcy throughout the United States, Courts of Bankruptcy are given authority and jurisdiction to reopen cases which were closed before being fully administered; and petitioner avers that his case has not been fully administered; and she avers that a similar duty and right is conferred by the provisions of Section 75, as amended, which enactment expressly provides that relief may be granted to any farm debtor occupying the status of your petitioner. Your petitioner avers that under the changed conditions and interpretations of the said Act that she is entitled to have relief under the provisions of Section 75 of the Bankruptcy Act; that she will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors and that she if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75.

Wherefore, petitioner prays that her case be reinstated or reopened and that same re re-referred to Referee or Conciliation Commissioner and that proceedings be had ir said case as provided by law and by the rules of this Honorable Court.

Your petitioner further shows that there are on file in her former farm debtor petition certain schedules as re-

quired by the provisions of said Section 75 of the
28 Bankruptcy Act, together with all information required by the provisions of said Act. She prays that if she be mistaken in the form of relief, and that if she should refile instead of asking for reinstatement and reopening of her former case, then she prays that her former schedules and information be taken as part of this petition, and she hereby offers to pay such fee or fees as are required under said Act.

MINNIE REESE WRAGG,
Petitioner.

Sworn to and subscribed before me this 4th day of March, 1940.

EUGENIA K. RANKIN,
(Seal) Notary Public.

Filed by Walter J. Knabe, as Attorney for Minnie Reese Wragg.

Filed March 11, 1940.

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29 (Title Omitted.)

To the Honorable Chas. B. Kennamer, Judge of said Court:

Now comes the Federal Land Bank of New Orleans (hereinafter for convenience called respondent), solely and specially for the purpose of this answer and motion, and for answer to the petition of the said Minnie Reese Wragg, filed in this Court on, to-wit, March 11, 1940, to reinstate or reopen the proceedings in the above entitled cause, respectfully avers and makes known to the Court:

I.

(a) On, to-wit, October 15, 1934, the petitioner as Minnie Reese Richardson Wragg, made, executed and de-

livered to respondent, the Federal Land Bank of New Orleans her promissory note and mortgage in the principal sum of, to-wit, $3,857 00, which said mortgage was given to secure the purchase money for that certain real property in said mortgage described, consisting of 138 acres of land, more or less, situated in Elmore County, Alabama, which said Bank had sold and conveyed to the mortgager, and which said consideration was payable in twenty (20) annual installments with interest thereon at the rate of 5% per annum. The petitioner and mortgagor defaulted in the payment of the first and second installments due under said mortgage, as also in other respects, and the mortgagee, respondent, as it was by the terms and provisions of said mortgage authorized to do, declared the entire indebtedness secured by said mortgage to be due and payable, and, on, to-wit, February 4, 1937, it filed its bill of complaint in this Honorable Court, sitting in equity, to foreclose the said mortgage.

The mortgagor, petitioner here, employed counsel and defended or pretended to defend or contest said suit, but on submission of the cause on pleadings and proof, said Court in Equity decreed that complainant was entitled to relief as prayed for and to have said mortgage foreclosed, and appointed a Special Master to ascertain and report the amount of indebtedness due and owing respondent under said mortgage.

The Special Master on, to-wit, August 16, 1937, found and reported the amount due as $4,647.43, and on, to-wit, September 7, 1937, said report was by decree of said Court in Equity confirmed, and directed the Special Master, on failure of the mortgagee within the time specified by the decree, to pay said indebtedness, to proceed to advertise and sell said property.

Thereupon, to-wit, October 16, 1937, petitioner here filed in this Court, in Bankruptcy, her petition and proceeding

as a farmer debtor under Section 75 of the Bankruptcy Act. The Court thereupon appointed a Conciliation Commissioner therein, to whom said proceedings were regularly referred in accordance with said Bankruptcy Act, and said Court ordered a stay of said proceedings in equity, to foreclose said mortgage until the further order of the Court.

On, to-wit, December 15, 1937, said Conciliation Commissioner, after hearing testimony, found that the proposal of the petitioner, rejected by respondent, was unfair and inequitable; that the reasonable value of the land did not exceed the indebtedness thereon and the offer of $125.00 yearly rental was less than its rental value and would not give a fair return on the mortgage debt, and made his report to the Court in which he recommended that the offer of composition or extension made by petitioner and which respondent had rejected, be not approved. A copy of said report, for the convenience of the Court, is attached hereto as Exhibit A, and made a part hereof.

On, to-wit, January 4, 1938, the Court made and entered an order or decree approving the recommendation of the Commissioner and disapproving the proposal made by petitioner. A true and correct copy of said order or decree, for the convenience of the Court, is hereto attached, marked Exhibit B, as a part hereof. As will be observed,
31 it is recited in said decree that:

"The debtor through her attorney having requested that she be granted fifteen days from the date of this order within which time to amend her original petition and pray to be adjudged a bankrupt, and the Court being of the opinion after hearing argument of counsel for the respective parties that the debtor is not entitled to so amend her petition in order to obtain the benefits of Sub-section (s) of Section 75 of the Bankruptcy Law, but she is entitled to

become a voluntary bankrupt under the general Bankruptcy Law as last amended if she so desires."

In said order or decree it was further provided that the debtor be allowed fifteen days to take such steps toward becoming a voluntary bankrupt under the General Acts of Bankruptcy, as last amended, as she might be advised to adopt and that if such action were not taken, petitioner's original petition and all proceedings thereunder should stand dismissed out of said Court.

No further proceedings having been taken therein by the said petitioner, the Court, in said Equity proceeding, on, to-wit, February 5, 1938, thirty days of more after the making of said former order, directed the Special Master to proceed to carry out the said decree of sale under said mortgage and on, to-wit, March 12, 1938, the property was sold by the said Special Master and bid in by the Federal Land Bank of New Orleans for the sum of $2,500.00, being the last and highest bid received.

After due notice, said Court, sitting in Equity, and desiring to be as lenient to petitioner as possible, on, to-wit, April 21, 1938, made and entered a decree reciting that the Court, having indicated that in its opinion the bid of $2,500.00 was inadequate, and the bidder having voluntarily increased its bid to the sum of $4,500.00, which the Court found to be fair and reasonable, and materially more than the property would bring at public sale, confirmed said report of the Special Master as thus amended; and directed the Special Master to make, execute and deliver to the said The Federal Land Bank of New Orleans a deed to said property, and by said decree, after even taxing the costs and expenses of the proceeding against the Federal Land Bank, rendered a deficiency decree against the said petitioner for the sum of, to-wt, $543.98, copy of which

said decree, for the convenience of the Court, is
32 hereto attached and marked Exhibit C, as a part hereof.

The Special Master, on to-wit, the ... day of April, 1938, made, executed and delivered his deed conveying said property to the said The Federal Land Bank of New Orleans, and the respondent, thereupon, was placed in possession of the said real property.

(b) Relying upon the integrity and finality of said decree of sale, and of the Master's deed executed thereunder, respondent deferred making any disposition of the property until to-wit April 3, 1939, when it made and entered into a written contract or agreement with one S. P. Storrs of Elmore County, Alabama, whereby it agreed and contracted to sell and convey said real property to the said Storrs for the sum of $3,500.00, subject only to the statutory right of redemption (which has now expired), of which consideration the sum of, to-wit, $700.00 has been paid by the said Storrs to respondent, pursuant to said agreement, and the remainder is to be paid in certain annual installments and said Storrs has been let into and is now in possession of said property and is faithfully carrying out the provisions of said contract of sale. A true copy of which contract is hereto attached and marked Exhibit D, as a part hereof.

Wherefore respondent says the status with respect to said property had materially changed, when said petition was filed, in March, 1940, the rights of third parties have intervened and vested, and it would be most inequitable and unfair to it as also to the said Storrs, to now grant the said petition and reopen or reinstate the said bankruptcy or farm debtor proceedings, especially so, since petitioner has made no attempt, and shown no purpose or desire to redeem said property. Although the debt secured by said

mortgage was given as aforesaid for the purchase price of said real property, and the mortgagor remained in possession thereof for several years, she has paid nothing whatever on said debt, except that the mortgagee collected from the tenants on said property some rent for the years 1933 and 1934, amounting to about $250.00, nor has she even paid the taxes on said property; and she had and has no equity whatever therein, since said property is now worth not exceeding the mortgage debt thereon.

33

II.

Further answering said petition, respondent says that the said proceedings instituted by the petitioner as a farmer debtor, under Section 75 of the said Bankruptcy Act, having been by the final decree if this Court dismissed, the said case was not pending in this Court when the petition to reopen or reinstate the same was filed, and the said case was not dismissed by any Conciliation Commissioner, Referee or Federal Court because said Court had erroneously assumed or held that Sub-section (s) of Section 75 of said Act was unconstitutional; and no sufficient right or reason is set up in the petitioner's said petition for the exercise now of any discretion which the Court may have to reopen or reinstate said farmer debtor proceedings under said Section 75 or any amendment thereof.

III.

Defendant further says that at the time of the filing of her said farm debtor proceedings in this Court, the petitioner was not a *bona fide* "farmer" within the meaning and purview of Section 75 of the Bankruptcy Act, as was revealed by the testimony and proceedings before the Conciliation Commissioner, to whom her said petition was referred, to all of which said proceedings reference is here made. That it was disclosed by said testimony and proceed-

ings that there were only about fifteen or eighteen acres of said property in cultivation for the year 1937, and that by tenants of the petitioner, and the rental therefor was, to-wit, $45.00—not materially more than enough to pay the taxes thereon—while the reasonable rental value of the whole of said property was shown to be from $150.00 to $200.00 per year; and that by the schedules so filed by said petitioner it appeared that her income or support was derived from other sources.

IV.

Respondent further avers: that petitioner having refused or failed to amend her proceedings and ask that she be adjudged a voluntary bankrupt, as she was expressly permitted to do by the said order or decree of the Court of January 4, 1938, said order or decree became final or conclusive as to rights which have vested thereunder,
34 and she is now estopped or precluded from having said proceedings reopened or reinstated to the detriment or prejudice of petitioner and its vested rights, and of those claiming under it.

V.

The application of the petitioner to reopen or reinstate the proceedings filed by her in this Court on, to-wit, October 16, 1937, was not seasonably made.

VI.

This Honorable Court is without jurisdiction now to reopen or reinstate the said farm debtor petition and proceedings instituted by the petitioner October 16, 1937.

Wherefore, and for the several reasons herein set forth, respondent respectfully objects to and protests against the

granting of said petition insofar as it seeks to reopen or reinstate the said farmer debtor proceedings and now moves the Court to dismiss or deny the said petition so filed herein on, to-wit, March 11, 1940.

STEINER, CRUM & WEIL,
Attorneys for Respondent, The Federal Land Bank of New Orleans.

Filed June 29, 1940.

35 State of Louisiana,
Parish of Orleans.

Before me, the undersigned Notary Public in and for the State and Parish aforesaid, personally appeared W. W. Fussell, who being by me first duly sworn, deposes and says that he is Vice-President and Treasurer of The Federal Land Bank of New Orleans, and is authorized for and on its behalf to make this affidavit; that he has read the foregoing answer and has knowledge of the facts therein stated and that the facts therein set forth are true to the best of affiant's knowledge and belief.

W. W. FUSSELL.

Subscribed and Sworn To before me, as witness my hand and official seal, this the 28th day of June, 1940.

HAROLD MOSES,
(Seal) Notary Public.

35¼ (EXHIBIT "A" is hereinabove set out as "Report of Conciliation Commissioner, filed December 16, 1937, see Page No. 14.)

* * * * * * * *

35½ (EXHIBIT B is hereinabove set out as "Decree of Court Approving the Recommendation of the Conciliation Commissioner, and Dismissing the Proceedings. See Page No. 18.)

* * * * * * * *

36 EX. "C".

In the District Court of the United States, for the Northern Division of the Middle District of Alabama.

The Federal Land Bank of New Orleans
vs. In Equity
Minnie Reese Richardson Wragg and George B. Wragg.

This cause coming on further to be heard upon the report of the sale filed herein by the Special Master, the motion of the plaintiff for confirmation thereof, and upon the exceptions thereto filed by the defendants; now come the parties, and upon consideration thereof, the Court having indicated that in its opinion the bid of the plaintiff of $2,500.00 as shown by said report was inadequate, the plaintiff, in open Court, and by leave of the Court, voluntarily increased its bid to the sum of $4,500.00, which amount the Court finds to be fair and reasonable, and probably materially more than said property would bring at public sale. The Court is, therefore, of the opinion that said amended bid or offer is fair and reasonable and should be accepted and approved, and that a re-advertisement and re-sale of said property would not result in a better offer, and would be a useless expense, and is therefore unnecessary.

It is, therefore, Considered, Ordered, Adjudged, and Decreed that the exceptions to the Master's report, in view of the increased bid of the plaintiff for said property, are not well taken and are hereby separately and severally overruled, dissolved, and held for naught.

It is, further, Considered, Ordered, Adjudged, and Decreed that Eugene Ballard as Special Master be and hereby is authorized, empowered and directed to make, execute, acknowledge, and deliver to the plaintiff a deed conveying to it the following described real property, to-wit:

The West half of the Northeast quarter and the Northeast quarter of the Southwest quarter, and the North half of the Southeast quarter of the Southwest quarter of Section 23, Township 18, Range 17, in Elmore County, Alabama; containing in the aggregate 140 acres, more or less;
37 subject, however, to that certain right of way in favor of the Southern Natural Gas Corporation, or its assigns, dated November 29, 1933, executed by The Federal Land Bank of New Orleans;

together with all of the right, title, claim, and interest which the defendants Mirmie Reese Richardson Wragg and George B. Wragg, and each of them, have or had in and to said property at the time of the execution of said mortgage.

And it being made to appear to the Court, and the Court finds, that the amount of the debt due by the defendant Minnie Reese Richardson Wragg to the plaintiff, for which said mortgage was given to secure, amounts, with the interest thereon to this date, to the sum of $4,836.99, against which the amount of said bid, after deducting therefrom the taxable costs and expenses in this proceeding, which the Court finds amount to the sum of $206.99, and is taxed against the defendant Minnie Reese Richardson Wragg, should be applied as a credit on said mortgage indebtedness, leaving a balance due by the said Minnie Reese Richardson Wragg to the plaintiff of the sum of $543.98.

And the plaintiff having moved the Court for a deficiency judgment against the said Minnie Reese Richardson Wragg therefor, it is, therefore, further Considered, Ordered, Adjudged, and Decreed that the plaintiff, The Federal Land Bank of New Orleans, have and recover of the defendant Minnie Reese Richardson Wragg the said sum of $543.98, for which execution may issue.

It is, further, Considered, Ordered, Adjudged, and Decreed that the defendants forthwith vacate and surrender

possession of said property to the plaintiff or its authorized representative or agent, and, failing so to do, plaintiff may apply to this Court for a writ of assistance, or such other order or decree in the premises as may be deemed necessary.

Done, this the 21 day of April, 1938.

C. B. KENNAMER,
U. S. Judge.

38 EX. "D".

Copy Copy

Real Estate Purchase Contract.

Farm No. 82753

April 3, 1939

To *The Federal Land Bank of New Orleans*

I, (whether one or more) *S. P. Storrs*, hereby offer to purchase of *The Federal Land Bank of New Orleans* hereinafter called the Seller, as a tract and not the acre, the following described real estate, situated in the County of Elmore, State of Alabama, to-wit:

West half of Northeast quarter and Northeast quarter of Southwest quarter; North half of Southeast quarter of Southwest quarter; all in Section 23, Township 18, Range 17, less and except rights of way heretofore granted to the Southern Natural Gas Corporation and Elmore County; also less and except 2 acres lying South and East of the road in the Southeast corner of West half of Northeast quarter of Section 23, Township 18, Range 17.

containing *138* acres, more or less; subject to all right of ways, leases, easements, or servitudes, if any; and less and except one-half interest in such minerals and mineral rights in and under the above property as may be owned by the Seller, it being understood and agreed that the Seller is to convey to me only one-half of such minerals as may be legally vested in the Seller.

I hereby agree to pay the Seller for the above described real estate the sum of *Three Thousand Five Hundred and No 100* Dollars ($3,500.00), payable as follows:

$ *100.00* cash herewith.
$..... cash on.....
$ *100.00* on the *1* day of *January*, 1940
$ 500.00 on the .. day of March, 1940
$..... on the .. day of ....., 19..
$..... on the .. day of ....., 19..

Interest at the rate 5% per annum on the unpaid purchase price from the *15* day of *March*, 1940, shall be paid at the maturity of the first installment. Thereafter interest at the rate of 5% per annum on each maturing installment and on the unmatured balance of the purchase price shall be paid on the maturity dates set out above.

39 All of the above annual payments, including both principal and interest, unpaid when due shall thereafter bear interest at the rate of 6% per cent per annum until paid.

When the purchase price has been paid down to $2,800.00, and all interest due has been paid and all other agreements contained herein have been faithfully performed, the Seller will execute to me a deed to the land described herein retaining a vendor's lien for that part of the purchase price which remains unpaid, and at that time and

simultaneously therewith to evidence and secure the purchase price still unpaid I will execute a note payable in *20* equal principal installments to said Seller, the first installment maturing on the *15* day of *September*, 19*40*, and one on the same day and month each year thereafter, totalling the amount required to complete said purchase price, and a first mortgage or deed of trust conveying the lands described herein and containing covenants and agreements then in common usage by Seller in the sale of its lands. Said note shall bear interest at the rate of 5% per annum for amounts not in default, and 8% per annum for all amounts, including both principal and interest in default from date of default. I do further agree to pay all costs and expenses, including revenue stamps, incident to the execution and recordation of the mortgage or deed of trust.

I further understand and agree that:

(1) Any check or money order accompanying this agreement may be immediately collected by the Seller with the understanding that the deposit of such checks or money orders for collection shall not be considered as an acceptance of this offer. In the event this offer is not accepted the amount so collected is to be promptly returned, without interest.

(2) It is understood and agreed that this contract and the right to purchase the land described herein are not transferable, except with the written consent and approval of the Seller.

(3) The Seller will deliver possession of the above described real estate to me on or before the *15* day of *March*, 19*40*, unless occupants refuse to vacate, in which event the

Seller will promptly undertake to secure possession, if possible, resorting to legal action if necessary.

(4) I will assume and agree to pay all taxes and assessments against the property described herein for 1940 and subsequent years; and if said lands are assessed with other lands and the Seller pays the taxes on the entire assessment or on any part of the above described land, then I agree to reimburse the Seller in an amount sufficient to pay that part of the taxes properly chargeable to the land herein described.

(5) Immediately upon the Seller's acceptance of this offer, I agree to obtain and pay for fire and tornado insurance in the Seller's name on all buildings now situated on or to be erected on this land, in amounts and with companies satisfactory to the Seller, and to maintain said insurance for the life of this contract; should I default in this covenant, or should I ever fail to pay any taxes or other charges herein stipulated, the Seller is hereby authorized at its option to effect such insurance or to pay such taxes or other charges, and such advances are to be due and payable immediately and bear 6% interest from the date advanced until paid.

(6) I hereby agree that I will take good care of said real estate, and will not commit waste or allow waste to be committed on same, and will cause same to be worked and cultivated in a proper and farmer-like manner at all times; further, I will not cut or remove any timber except for ordinary farm purposes; and further I will keep the houses, fences, ditches, terraces and other improvements on said land in good condition and repair at all times, whether such improvements are now existing or hereafter constructed on said land.

(7) I understand that no oral or written representations with reference to the above described real estate, which are not herein set forth, shall be binding on the Seller. I have personally inspected the above described real estate, and make this offer solely on the basis of my own judgment as to the amount of and the present condition of the property.

(8) If the above described property is situated in the State of Alabama, I understand that the sale will be made subject to the statutory right of redemption following foreclosure, if any exists.

(9) There are no other conditions or agreements except as follows:

41 The 1939 rents are to be reserved by the Seller.

(10) Should I fail or refuse to perform each and every term and obligation of this contract, then the Seller, at its option, shall have the right to immediately cancel this contract and to retain the cash paid hereunder as liquidated damages to cover the expense of negotiating this sale with me, of properly cancelling the same, of negotiating the resale of the property to a third person and the loss of revenue suffered by it due to the withdrawal of the property from market because of this contract; or, in the alternative the Seller shall have the option to declare all of the foregoing amounts due and payable and stand on this contract and enforce it specifically. In the event this contract is placed in the hands of an attorney for collection, I agree to pay a reasonable attorney's fee; and do hereby waive all exemptions as to personalty as provided for by the laws of the State.

(11) This offer to remain irrevocable until midnight of the thirtieth day after date hereof, excluding the day

of the date of this instrument; acceptance by the Seller to be evidenced by a written notice mailed to my address as given below within the time specified above.

S. P. STORRS,
Purchaser.

Address:
Rt. 3, Wetumpka, Alabama.

Witness:
PAUL H. MARTIN.

.....
Purchaser.

Address:
.....

Witness:
.....

The offer set forth above to purchase the real estate described therein is hereby accepted without change.

Witness the signature and seal of *The Federal Land Bank of New Orleans* by its *Vice-President*, duly authorized, this the.....day of....., 19..

THE FEDERAL LAND BANK
OF NEW ORLEANS,
By.....
Vice-President.

Received Jun. 28, 1940. Mail Room.

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42 (Title Omitted.)

It Is Agreed that this cause be submitted for decree, to the Honorable T. A. Murphree, United States District

Judge, upon the record and the verified petition of Minnie Reese Wragg and the verified answer of the Federal Land Bank of New Orleans.

This the 6th day of July, 1940.

WALTER J. KNABE,
Attorney for Petitioner.
STEINER, CRUM & WEIL,
Attorneys for Federal Land
Bank of New Orleans.

Filed July 6, 1940.

OPINION.

43 (Title Omitted.)

The petitioner on the 15th day of October, 1934, purchased the farm involved in this case from the Federal Land Bank of New Orleans, executing her mortgage in part payment of the purchase price. The mortgage falling in default, the Federal Lank Bank filed a bill in Equity to foreclose the mortgage on February 4th, 1937. After this proceeding had been pending for some months, petitioner, to avoid a decree of foreclosure thereon, filed her petition for relief under Section 75 of the Bankruptcy Act and obtained a stay of foreclosure proceedings. The case was duly referred to a Conciliation Commissioner who reported that petitioner's proposal "does not include an equitable and feasible method of liquidating the claim of the secured creditor . . ." and recommended that same be rejected.

On January 4th, 1938, the Court confirmed the report and recommendation of the Conciliation Commissioner, and made an order dismissing the petition and holding that petitioner was entitled to became a voluntary bankrupt

under the General Bankruptcy Law. The order of dismissal becoming final fifteen days after date, the Federal Land Bank proceeded to revive and pursue the foreclosure preceedings in the Equity Court to a foreclosure decree and sale by a Special Master.

More than two years later, viz:, March 11th, 1940, petitioner, relying on Section 2, Sub-division 8, of the Chandler Act, conferring upon Courts of Bankruptcy the broad power "to close . . . ; and reopen estates for cause shown," filed this petition praying that the original proceedings under Section 75 be reopened and revived and that she be granted the benefits of the Frazier-Lemke Act. The Federal Lank Bank resists this petition on the ground that after the order of dismissal, it foreclosed the mortgage and re-sold the property to another party. It further
44 urges that the Bankruptcy Court has lost its jurisdiction because of the decree of dismissal and that petitioner herself is guilty of laches and is now estopped from asserting any rights under the farm-debtor proceedings.

Petitioner conceives that under the decision of the Supreme Court in the case of *John Hancock Mutual Life Insurance Company v. Bartels*, 60 Supreme Court 221, 308 U. S. 180, upon the failure to work out a composition with her creditors, she had a right to be adjudicated a bankrupt under Sub-division (s) of Section 75, and that she was entitled after such adjudication as a matter of right to all the benefits thereunder including "a stay of all proceedings . . . . for a period of three years." Undoubtedly the *Bartels* case so holds, but the question now raised does not involve the correctness vel non of the order of dismissal of January 4th, 1933. The order of January 4th, 1938, specifically omits any ruling on the question of whether the debtor is a "farmer" or not within the meaning of the law. There is no adjudication by that order on petitioner's status

as a "farmer," and in view of what is said hereafter, it is unnecessary to decide this question in order to make a proper disposition of the case.

Apparently, the petitioner bases her right to re-instatement in part, at least, on the provision of Section 75 (s) requiring all cases dismissed because of the first act being held unconstitutional, to be re-instated. The answer to this contention is that this case was not dismissed for that reason. We have found no other mandatory provision relating to re-instatement.

The rights of Courts of Bankruptcy to re-open and re-instate cases closed improvidently or before a full administration thereof has long been recognized and practiced. There are three essential elements on which such orders must be based. There must be a seasonable and diligent application. There must be good cause existing justifying the re-opening of the case in the sound discretion of the Court: The Court must be satisfied that no intervening rights have vested which it would be inequitable
45 and unjust to disturb. *Wayne Gas Company v. Owens Company*, 300 U. S. 131, 81 L. Ed. 557.

Petitioner does not set forth or offer any new or changed condition or proposal except as she avers:

"Your petitioner avers that under the changed conditions and interpretations of the said Act that she is entitled to have relief under the provisions of Section 75 of the Bankruptcy Act; that she will be able to receive and obtain such relief either by making and obtaining acceptance of a proposal to her creditors and that she if she fails in this she will be able to obtain relief under the supervised debt extensions authorized by Section 75."

The Court is of the opinion that petitioner has not met the requirements laid down by *Wayne Gas Company v. Owens Company, supra;* and that her petition should therefore, be dismissed.

A consideration of the following cases lends further support to this view.

It was held in the case of *Leinweber v. Federal Land Bank*, post, that under the mandatory re-instatement provisions of the Second Frazier-Lemke Act, petitioners were required to act *promptly*. Where the proceedings were dismissed on June 28th, 1935, on the ground of unconstitutionality and the petitioner delayed until April 3rd, 1937, to file his application for re-instatement, the Court refused to reopen the case.

"The petitioner has failed to bring his case within the amendment of August 28, 1935, which permitted him to petition for reinstatement of his application only in case he acted *promptly*. The statute provides that "all cases that have been dismissed * * * shall be promptly reinstated * * *." While this command is directed to the Court rather than to the debtor or petitioning creditors, it is obvious that a Court can make no such adjudication against the debtor's objection. The Court may only act upon the application of a suitor (either debtor or petitioning creditors). Hence, we conclude that the word "*prompt*" applies to the Court and to the debtor in voluntary proceedings. A debtor who inexcusably delays will defeat his right to relief. Stronger is the case where the facts which establish laches also make out an estoppel."

Leinweber v. Federal Land Bank of St. Louis, Mo., 95 Fed. (2d) 240.

It was held in *Massey v. Farmers National Trust Company*, 94 Fed. (2d) 531, that a case should not be reopened where it appears the debtor is beyond all reasonable hope of financial rehabilitation and the proceedings can have no effect beyond postponing inevitable liquidation, and the proceedings should be halted at the outset.

46 It appears that in the case at bar, the rights of third parties have intervened, and that the Equity Court has acted at a time when it had full jurisdiction and full right to proceed. In the case of *Miller v. Hatfield*, 42 A. B. R. (N. S.) 414, 111 Fed. (2d) 28, the Court said:

"The question for decision is whether the orders of September 27 and November 8, 1937, are of such finality as to prohibit the conciliation commissioner from granting a rehearing. There is some conflict of opinion in regard to the power of a referee in bankruptcy over his own orders, but we believe the correct rule as applied to farmer-debtor proceedings in that the conciliation commissioner has the same power to vacate his order as has a Court during the term and as the Bankruptcy Court has no term, the conciliation commissioner has the power to vacate any order entered during the course of the proceedings *unless rights have intervened which it would be inequitable to disturb.* Re Pottasch Brothers Company (C. C. A., 2nd Cir.), 30 Am. B. R. (N. S.) 225, 79 F. (2d) 613.

This conclusion is not in conflict with International Agr. Corp. v. Cary, supra, in which case the order involved had been entered by a predecessor referee, the estate closed and no action taken to vacate it until two years had expired.

Appellant's objection to the order of sale was substantially a petition for rehearing on the two provisional orders and in our opinion, *no intervening rights appearing and diligence being shown*, the conciliation commissioner, upon the application was authorized to, and should have, granted a rehearing on the merits . . . . " (Italics supplied.)

The Supreme Court of the United States recently divided on a question very much similar to the one raised by petitioner's application for reinstatement, in *Union Stock Land Bank of Detroit, v. Byerly*, 42 Am. B. R. (N. S.) 402, 60 S. St. Rep. 773. However, in both the majority and in the dissenting opinions, the Justices recognized that the intervening rights and equities of all parties concerned with the property should be given consideration and effect. Quoting from the dissenting opinion of Justices Black, Douglas and Murphy:

"Under disposition of the farmer's petition, he was entitled to the protection and benefit of the Act, and the Bankruptcy Court had exclusive jurisdiction of his property. Dismissal of the proceeding did not constitute its final disposition where reinstatement was available. Certainly, this must hold true at least for the period of time after dismissal during which the farmer had a statutory right to appeal from the District Court's action. Otherwise, even appeal might be wholly unavailable and futile. When a Court of bankruptcy reinstates a case previously retired from the docket, as this farmer's case was reinstated, the Court reconsiders the cause on the
47 merits upon the original as well as any supplemental petitions unless rights have *'intervened which would render it inequitable to reconsider the merits.' Wayne Gas Company v. Owens Co.*, 300 U. S. 131, 138, 33 Am. B. R. (N. S.) 1, 7. *We find no intervening equities here.*" (Italics supplied.)

"So here, as in the Wayne case, State Court proceedings subsequent to dismissal, but while further proceedings could be had in bankruptcy, did not divest the debtor of his property; there 'was no abuse of sound discretion in granting the motion (for reinstatement) and reconsidering the cause'; the District Court in bankruptcy had 'the power for good reason, to revise its judgment (of dismissal and to reinstate) upon seasonable application and before

rights * * * * (had) vested on the faith of its action.' Id., 137, 138, 33 Am. B. R. (N. S.) at pages 6 and 7. And its general power to do so at least during the period allowed for taking an appeal, was reinforced by recognition of the specific statutory right of reinstatement, in the amended section 75 (s), which sprang into being only two days after dismissal of this farmer's petition. Paralleling the situation presented by the Wayne case, not only was the mortgagee-purchaser here a party to the 75 proceeding, but the State Court itself may be said to have acted with knowledge that the dismissal—of which it was notified—did not necessarily represent the last step in the Federal Court proceeding. Cf. Id., 135, 33 Am. B. R. (N. S.) at page 5:

"Here, the only asserted rights which intervened against this farmer-debtor were not those of a bona fide purchaser. The purchaser was the mortgagee who was a party to the Section 75 proceeding and who relied—at least in part—on an order of the Bankruptcy Court admittedly erroneous because contrary to the Frazier-Lemke Act, and rendered at the mortgagee's instigation. Therefore, the mortgagee-purchaser is not entitled to rely upon the status acquired by it in the State Court after dismissal 'as precluding further consideration of the petition' for composition. Cf. Id., 135, 33 Am. B. R. (N. S.) at page 5."

An order dismissing the petition will be entered.

This the 5th day of August, 1940.

T. A. MURPHREE,
United States District Judge.

PROCEEDINGS UNDER SECTION 75 OF THE BANKRUPTCY ACT AS AMENDED.

48 In the District Court of the United States for the Northern Division of the Middle District of Alabama.

In the Matter of
Minnie Reese Richardson Wragg, Debtor.
No. 8553.

This cause coming on to be heard upon the petition of the Debtor to re-open proceedings under Section 75 of the Bankruptcy Act as amended, and the answer of the Federal Land Bank of New Orleans thereto; together with agreement that said matter be submitted upon the record and the verified petition of the debtor and verified answer thereto; and the parties being present by counsel; and it appearing that the said proceeding under Section 75 of the Bankruptcy Act was instituted by the petitioner on October 16, 1937; and it further appearing that on January 4, 1938, the Court entered an order approving the report of the Conciliation Commissioner on the proposal of the Debtor to the creditors as not being equitable and feasible and recommending that same be not approved, and allowing petitioner fifteen days, at her request, in which to become a voluntary bankrupt under the General Bankruptcy Law as amended, and if such action was not taken, that the original petition and all proceedings thereunder to stand dismissed; and it further appearing that such action was not taken; and the matter being duly presented by counsel and considered by the Court, and it appearing that said proceedings should be dismissed in accordance with the written opinion handed down by the Court:

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the petition of Minnie Reese Richardson Wragg,

Debtor, to re-open the above proceedings be and the same is hereby denied, and that the proceedings herein be and the same are hereby dismissed.

This the 6th day of August, 1940.

T. A. MURPHREE,
United States District Judge.

Filed Aug. 8, 1940.

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49 APPEAL.

In the District Court of the United States for the Northern Division of the Middle District of Alabama.

In the Matter of:
Minnie Reese Richardson Wragg, Farm Debtor.

Now comes Minnie Reese Richardson Wragg and appeals from that certain judgment rendered in the above styled cause dated August 6, 1940, and filed August 8, 1940, same being signed by Judge T. A. Murphree, said appeal being taken to the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

MINNIE REESE RICHARDSON WRAGG.

WALTER J. KNABE,
Attorney.

Filed Sept. 5, 1940.

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50 APPEAL BOND.

(Title Omitted.)

State of Alabama,
Montgomery County.

Know All Men By These Presents: That we, Minnie Reese Richardson Wragg, principal and C. S. Richardson, George B. Wragg, sureties are held and firmly bound unto O. D. Street, Jr., as Clerk of the United States District Court for the Northern Division of the Middle District of

Alabama in the sum of Two Hundred Fifty and No/100 ($250.00) Dollars to be paid to the said O. D. Street, Jr., as Clerk or his successor in office, to which payment well and truly to be made, we bind ourselves and our heirs, executors, administrators jointly and severally by these presents.

Sealed With Our Seals and dated this 5th day of September, 1940.

The condition is such that whereas the above named Minnie Reese Richardson Wragg has prosecuted an appeal to the United States Circuit Court of Appeals to reverse the judgment rendered in the above entitled cause by his Honor T. A. Murphree, United States District Judge, under date of August 6, 1940 and filed in the Office of the Clerk of the District Court of the United States for the Northern Division of the Middle District of Alabama at Montgomery, Alabama; now therefore if the above named Minnie Reese Richardson Wragg shall prosecute said appeal to effect and answer all damages and costs, if she fails to make good her plea, then the above obligation to be void, else to remain in full force and effect.

MINNIE REESE RICHARDSON WRAGG. (L. S.)
C. S. RICHARDSON. (L. S.)
GEO. B. WRAGG. (L. S.)
OSCAR ANDERSON. (L. S.)
ARTHUR JACKSON. (L. S.)

51

Witness:
EFFIE T. GULLEDGE,
EFFIE T. GULLEDGE,
EFFIE T. GULLEDGE,
SALLIE FLOWERS.

Approved Sept. 23, 1940.

O. D. STREET, JR.,
Clerk.

Filed Sept. 5, 1940. O. D. Street, Jr., Clerk, by Annie Schoolar, Deputy.

State of Alabama.
Montgomery County.

I, Oscar Anderson, being duly sworn, depose, and say that I am worth the sum of Two Thousand Dollars ($2,000.00) over and above all my just debts and liabilities, exclusive of property exempt from execution and sale under the laws of the State of Alabama, hereby waiving my rights of exemption so far as the liability on this recognizance is concerned.

OSCAR ANDERSON,
(Surety.)

19 South Hillard St.
Tel. Cedar 3896-R.
Montgomery, Ala.

Subscribed and sworn to before me this 21 day of September, A. D. 1940.

SALLIE FLOWERS,
(Seal) Notary Public.

My commission expires February 25, 1942.

I, Arthur Jackson, being duly sworn, deposes and says that I am worth the sum of Two Thousand Dollars ($2,000.00) over and above all my just debts and liabilities, exclusive of property exempt from execution and sale under the laws of the State of Alabama, hereby waiving my rights of exemption so far as the liability of this recognizance is concerned.

ARTHUR JACKSON,
(Surety.)

438-B. St. John St.,
Cedar 5678,
Montgomery, Ala.

Subscribed and sworn to before me this 21 day of September, A. D. 1940.

SALLIE FLOWERS,
(Seal) Notary Public.

My commission expires February 25, 1942.

52 TAX ASSESSOR OF MONTGOMERY COUNTY.

John J. Flowers
Tax Assessor

Montgomery, Alabama.
September 16, 1940.

To Whom It May Concern:

This is to certify that the Tax Rolls of Montgomery County show Real Estate Assessed Value $4,800.00 under the joint heading Coralye S. Richardson and Minnie Reese Wragg.

JOHN J. FLOWERS,
Tax Assessor, Montgomery
County, Alabama.

Sworn to and subscribed before me this the 16th day of September 1940.

LOUISE S. CHAMPION,
(Seal) Notary Public.

PETITION FOR EXTENSION OF TIME FOR FILING RECORD ON APPEAL AND DOCKETING ACTION.

53 (Title Omitted.)

Now Comes, Minnie Reese Richardson Wragg, Farm Debtor and respectfully petitions this Honorable Court to

extend the time for filing the record in this case on appeal and docketing the action, and for reasons assigns the following:

1. Petitioner's inability to file a better bond caused a delay in preparing the record, as it was not desired to prepare the record if the bond could not be made.

2. It is the intention of attorneys representing the Federal Land Bank and your petitioner to shorten the record, and it has not been feasible for the attorneys to complete their work; wherefore petitioner prays that the time for filing the record on appeal and docketing the action be extended for an additional forty days.

Respectfully submitted,
WALTER J. KNABE,
Attorney for Minnie Reese Richardson Wragg.

ORDER.

The foregoing matter having been considered and the Court being of the opinion that same should be granted, the time for filing the record on appeal and docketing the action in the above matter is hereby extended for *30* days additional, said period to begin at the expiration of the first forty days provided by statute.

T. A. MURPHREE,
Judge, Uinted States District Court.

Filed Oct. 15, 1940.

54 In the United States Circuit Court of Appeals for the Fifth Circuit.

In Re:
Minnie Reese Richardson Wragg,
Appellant.

Now comes the Appellant and assigns the following errors:

1. The District Court erred in rendering its decree dated January 4, 1938. (R. . .)

2. The District Court erred in holding that the Farm Debtor was not entitled to amend her petition in order to obtain the benefits of Sub-section "S" of Section 75 of the Bankruptcy Act. (Decree of January 4, 1938, R. . . .)

3. The District Court erred in denying to the Farm Debtor the benefits of Sub-section "S" of Section 75 of the Bankruptcy Act. (Decree of January 4, 1938, R. . . .)

4. The District Court erred in its decree of January 4, 1938, by dismissing Farm Debtor's original petition. (R. . . .)

5. The District Court erred in rendering its decree of August 6, 1940. (R. . . .)

6. The District Court erred in denying Farm Debtor's petition to reopen and reinstate cause. (R. . . .) Decree of Aug. 6, 1940.)

7. The District Court erred in dismissing Farm Debtor's petition to reopen and reinstate cause. (R. . . .) Decree of of Aug. 6, 1940.)

8. The District Court erred in denying Farm Debtor's petition to refile Farm Debtor's proceedings. (Decree of August 6, 1940. R. . . .)

9. The District Court erred in its decree of August 6, 1940, in dismissing petition to refile Farm Debtor's proceedings. (R. . . .)

10. The District Court erred in denying to the Farm Debtor the benefits of Sub-section "S" of Section 75 of the Bankruptcy Act. (Decree of August 6, 1940. R. . . .)

WALTER J. KNABE,
JACK CRENSHAW.

Filed Nov. 11, 1940.

CERTIFICATE.

United States of America,
Middle District of Alabama.

I, O. D. STREET, JR., Clerk of the United States District Court, Middle District of Alabama, do hereby certify that the foregoing pages numbered one to fifty-four, both inclusive, contain a full, complete, true, and perfect transcript of the proceedings on appeal in the case of Minnie Reese Richardson Wragg, Farm Debtor, in proceedings under Section 75 of the Bankruptcy Act, No. 8553 of the docket of said Court.

Witness my hand, and the seal of said Court in the City of Montgomery, Alabama, on the 11th day of November, 1940.

O. D. STREET, JR.,
Clerk, United States District Court, Middle District of Alabama.

(Seal)

[fol. 57] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 26, 1942

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor,

versus

FEDERAL LAND BANK OF NEW ORLEANS

On this day this cause was called, and, after argument by Jack Crenshaw, Esq., and Walter J. Knabe, Esq., for appellant, and Benj. P. Crum, Esq., for appellee, was submitted to the Court.

[fol. 58] OPINION OF THE COURT—Filed February 25, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor, Appellant,

versus

FEDERAL LAND BANK OF NEW ORLEANS, Appellee

Appeal from the District Court of the United States for the Middle District of Alabama

(February 25, 1942)

Before Foster, Hutcheson and Holmes, Circuit Judges

HOLMES, Circuit Judge:

In 1934 appellant mortgaged her farm property in Alabama to the appellee. Nothing having been paid on the mortgaged debt in 1937, the appellee sought and obtained a decree of foreclosure in the federal district court, and a

special master was appointed to sell the land. Before the sale, appellant filed a petition under Section 75 of the Bankruptcy Act [1] for the composition and extention of her debts. [fol. 59] Appellee rejected the offer, and filed objections to its confirmation. The district court sustained the objections on the ground that the proposal was not a fair, equitable, and feasible method of financial rehabilitation of the debtor. The court denied appellant's motion for leave to amend and pray adjudication as a bankrupt under subsection (s) of the Act, but granted fifteen days in which to file a voluntary petition in bankruptcy.

Appellant took no further action, and the proceedings were dismissed. Leave to appeal to this court in forma pauperis was denied on the certificate of the district judge that, in his opinion, the appeal was not taken in good faith. 95 F. (2) 252. Certiorari was denied. 305 U. S. 596. The special master was directed to execute the prior decree of foreclosure. The bank became the purchaser, and the sale was confirmed on April 21, 1938. On April 3, 1939, the bank contracted to sell the property to a third party, delivered possession thereof, and was paid a part of the purchase price.

On December 11, 1939, the Supreme Court rendered its decision in the case of *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 U. S. 180, holding the fact that there was no reasonable probability of financial rehabilitation did not authorize the dismissal of proceedings for adjudication under subsection (s), supra. On March 11, 1940, appellant filed a petition in the court below to reinstate and reopen the proceedings under Section 75 of the Act, or, in the alternative, to permit her to refile her petition and schedules, claiming that her said proceedings were improvidently closed and that no intervening rights of innocent third parties had become vested. The petition was dismissed, and this appeal was then brought.

[fol. 60] A bankruptcy court has the power, in the exercise of its sound discretion, to revise its judgments upon seasonable application therefor, although the time prescribed for appeal therefrom has expired, if no intervening rights have become vested on the faith of its action. *Wayne Gas Co. v.*

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[1] 11 U. S. C. A., Sec. 203.

Owens Co., 300 U. S. 131. Relying upon this principle, appellant claims that the petition for reinstatement was seasonably brought, being within three months of the Bartels decision; that no intervening rights had become vested, because the two-year statutory period for redemption under Alabama law had not elapsed; and that appellant was therefore entitled, apparently as a matter of right, to the reinstatement of her original proceedings, or to be granted leave to refile the proceedings.

Conceding without deciding that the petition was filed in due time and that no intervening rights had become vested, these circumstances alone do not entitle the appellant to the relief sought. Rather, they are conditions precedent to the power of the court to exercise its discretion upon the petition. Unless such facts affirmatively appear, it is the duty of the court forthwith to dismiss the petition. If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the bankruptcy court.[2] The court below entertained jurisdiction of the petition, considered it fully, and dismissed it. On this appeal it is incumbent upon the appellant to show an abuse of discretion by the court below. She has not met this burden.

The petition for reinstatement was filed one day prior to the expiration of the statutory period for redemption. At that time appellant had been privileged to retain possession of her property for five years without making any payment on the mortgage, and had been out of possession [fol. 61] for approximately a year. Her petition did not allege that her financial condition had undergone any change, or that a further stay of proceedings would be likely to result in her financial rehabilitation. The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase

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[2] Wayne Gas Co. v. Owens Co., 300 U. S. 131; Union Land Bank v. Byerly, 310 U. S. 1.

price of the property with interest, costs, and the reasonable value of improvements.[a]

In view of these and other circumstances disclosed by the record, we think the judgment dismissing the petition was within the sound discretion of the court below. The judgment is

Affirmed.

[fol. 62] JUDGMENT

Extract from the Minutes of February 25, 1942

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor,

versus

FEDERAL LAND BANK OF NEW ORLEANS

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, Minnie Reese Richardson Wragg, debtor, and the sureties on the appeal bond herein, C. S. Richardson and George B. Wragg, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

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[a] Title 7, Sec. 732, Code of Alabama 1940; Morrison v. Formby, 191 Ala. 104, 67 So. 668; Upchurch v. West, 234 Ala. 604, 176 So. 186.

[fol. 66] ORDER DENYING REHEARING

Extract from the Minutes of March 24, 1942

No. 9753

MINNIE REESE RICHARDSON WRAGG, Debtor,

versus

FEDERAL LAND BANK OF NEW ORLEANS

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 67] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 68] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3048)